

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANCIS MAY,

Plaintiff,

v.

19-CV-1690-LJV-HKS
DECISION & ORDER

WHOLE FOODS MARKET INC.,

Defendant.

On December 19, 2019, the *pro se* plaintiff, Francis May, commenced this action under the Americans with Disabilities Act of 1990 and the New York State Human Rights Law. Docket Item 1. On March 9, 2020, this Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 6. On May 7, 2021, the defendant, Whole Foods Market Inc., moved for summary judgment, Docket Item 22; on June 28, 2021, the plaintiff served his response on the defendant, see Docket Item 24-1¹; and on July 29, 2021, the defendant replied, Docket Item 24. On February 2, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”) finding that the defendant’s motion should be granted. Docket Item 25. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must

¹ May did not file his response with the court, but the defendant included May’s response as an exhibit to its reply. See Docket Item 24 at 6 n.1; Docket Item 24-1.

review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to grant the defendant's motion.

For the reasons stated above and in the R&R, the defendant's motion for summary judgment, Docket Item 22, is GRANTED; the complaint, Docket Item 1, is dismissed; and the Clerk of the Court shall close the file.

The Court hereby certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore denies leave to appeal as a poor person. *Coppedge v. United States*, 369 U.S. 438 (1962).

May must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within 30 days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

Dated: March 7, 2023
Buffalo, New York

/s/ Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE